

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

DAVID SCOTT VARNALL  
PLAINTIFFS  
VS


CPL ANTHONY MENDEZ ET AL  
DELAWARE STATE POLICE TROOP 7  
PTLM LOWE, UNKNOWN OFFICERS WHO  
RESPONDED TO SCENE OF MILLSBORO POLICE  
AND PFC BUCHERT

OS-527-SLR

MOTION FOR AMENDMENT OF THE CLOSING ARGUMENTS  
OF DAVID S. VARNALL'S BRIEF WILL BE PRESENTED AT  
THE CONVENIENCE OF THE HONORABLE COURT.

COMES NOW, THE PLAINTIFF, DAVID SCOTT VARNALL  
PRO SE WHO PURSUANT TO DISTRICT COURT RULE 15.1, MOVES  
THIS HONORABLE COURT TO GRANT THIS MOTION. IN SUPPORT,  
THE FOLLOWING FACTS ARE ASSERTED;

SEE ATTACHED DOCUMENTS

DAVID SCOTT VARNALL  


DATED: 12/29/06

PLAINTIFF

DAVID S. YARNALL'S ARGUMENT TO  
CAPTAIN GREGORY D. NOLT'S REPORT

NO. 05-527-SLR

① I HAVE REVIEWED ALL THE REPORTS, AND MVR TAPE OF THE INCIDENT. AFTER REVIEW OF EACH OF THESE ITEMS, IT IS CLEAR THAT ALL DELAWARE STATE POLICE OFFICERS ACTED WITHIN DIVISIONAL POLICY AS WELL AS THE RULES AND REGULATIONS. CORPORAL MENDEZ DID AN EXCELLENT JOB WHEN HE SECURED A VERY COMBATIVE AND WRULY DEFENDANT THAT APPEARED TO BE HIGH ON AN UNKNOWN SUBSTANCE. HOWEVER, THERE WERE SEVERAL AREAS OF CONCERNS THAT WERE IDENTIFIED THROUGH THIS REVIEW AND THEY ARE DISCUSSED BELOW.

④ I WAS NOT COMBATIVE. HOW COMBATIVE CAN A PERSON, SUCH AS MYSELF, BE WHILE I WAS HANDCUFFED, WITH MY HANDS BEHIND MY BACK?

I'VE GOT LEGAL WORK THAT LACKS INFORMATION, OUTRIGHT LIES AND COVER UP IN THE VIDEO. SO, I'VE GOT TO BE SHOWN, IN BLACK AND WHITE, THAT IT'S WITHIN DELAWARE STATE POLICE DIVISIONAL POLICY AS WELL AS THE RULES AND REGULATIONS, THAT IT'S PROPER PROCEDURE TO HIT A PERSON ON THE HEAD WITH AN AIRCRAFT GRADE ALUMINUM MAGLITE FLASHLIGHT THAT CONTAINS FOUR D BATTERIES AND WEIGHS 5-6 POUNDS?

② CPL MENDEZ WAS JUSTIFIED WHEN HE USED HIS FLASHLIGHT IN AN ATTEMPT TO GAIN COMPLIANCE FROM THE DEFENDANT AS THE DEFENDANT ATTEMPTED TO DRAG HIM TOWARDS THE ROAD. HAD CORPORAL MENDEZ NOT USED HIS FLASHLIGHT THERE WAS AN EXCELLENT CHANCE THAT EITHER CORPORAL MENDEZ OR THE DEFENDANT COULD HAVE BEEN MORE SERIOUSLY INJURED.

③ CPL. MENDEZ WAS NOT JUSTIFIABLE BY STRIKING ME ON THE HEAD AS HARD AS HE DID. HE HIT ME WITH ANGER AND THE BLOWS WERE BACK TO BACK. I WAS HIGH AND IRRATIONAL AT THAT TIME, AND THAT ERROR OF BAD THINKING CAUSED ME TO GET UP OFF OF MY KNEES WHEN MENDEZ LEFT ME UNATTENDED AND I STARTED WALKING AWAY TOWARDS THE STREET. MENDEZ GRABBED ME WITH ONE ARM AND I ENDED UP DRAGGING HIM BACK TO THE CAR. WHEN MENDEZ HAD ME PUSHED UP AGAINST THE CAR I STARTED MOVING AROUND AGAIN. MENDEZ GOT ANGRY AND HIT ME. IF WE WERE HEADED TOWARDS THE STREET, THEN WHY DO BOTH BLOWS TO MY HEAD ARE SEEN IN THE VIDEO? IF WE WERE HEADED TOWARDS THE ROAD, NOTHING



WOULD HAVE BEEN SEEN IN THE VIDEO. I DON'T UNDERSTAND WHY MENDEZ HELD ONTO THE FLASHLIGHT THE WHOLE TIME FROM WHEN I GOT UP AND STARTED WALKING AWAY TILL WHEN HE HIT ME ON THE HEAD? WHY WOULDN'T HE DROP THE FLASHLIGHT AND USE BOTH HANDS TO TAKE ME TO THE GROUND. MENDEZ COULD HAVE DONE SO MANY OTHER TACTICS OR MOVES TO SUBDUCE ME BESIDES HITTING ME ON THE HEAD WITH A MAGLITE FLASHLIGHT. I BLED HEAVILY. SOMEBODY MUST HAVE DEEMED OR DIAGNOSED THE INJURY SERIOUS ENOUGH THAT A CT SCAN WAS DONE. THIS SENTENCE - HAD CORPORAL MENDEZ NOT USED HIS FLASHLIGHT THERE WAS AN EXCELLENT CHANCE THAT EITHER CORPORAL MENDEZ OR THE DEFENDANT COULD HAVE BEEN MORE SERIOUSLY INJURED IS: SPECULATION.

③ EVEN THOUGH CPL. MENDEZ DID AN EXCELLENT JOB WHEN HE INITIALLY HANDCUFFED THE DEFENDANT, CPL. MENDEZ'S DECISION TO PLACE THE DEFENDANT ON THE GROUND IN FRONT OF HIS POLICE VEHICLE, WHILE HE COMPLETED A DATA CHECK, GAVE THE DEFENDANT OPPORTUNITY TO ESCAPE. IT WAS DURING THIS TIME, THAT THE DEFENDANT GOT TO HIS FEET AND ATTEMPTED FLEE. THIS FORCED CORPORAL MENDEZ TO ONCE AGAIN SUBDUCE A COMBATIVE DEFENDANT AND HOLD HIM ON THE HOOD OF HIS POLICE VEHICLE UNTIL ASSISTANCE ARRIVED. HAD PROPER PRECAUTION BEEN TAKEN AT THAT TIME THE RISKS ASSOCIATED WITH UNATTENDED PRISONER WOULD HAVE BEEN MINIMIZED.

④ CPL. MENDEZ'S DECISION WAS WRONG TO LEAVE ME UNATTENDED. I WAS HIGH AND THAT MADE ME GET UP OFF OF MY KNEES AND START WALKING AWAY.

⑤ THE REST OF CAPTAIN'S NOLT'S REPORT SPEAKS FOR ITSELF.

### DAVID S. YARNALL'S ARGUMENT TO LT. ROGER A. WILLEY'S REPORT

① AFTER REVIEWING THE REPORT OF INVESTIGATION AND THE MVR TAPE OF THIS INCIDENT, SEVERAL CONCERNS ARISE. CPL. MENDEZ WAS CONFRONTED WITH AN UNPREDICTABLE, PHYSICALLY IMPOSING SUSPECT WHO HAD ALREADY DEMONSTRATED AGGRESSIVE AND VIOLENT ACTIONS TOWARD TWO

MOTORISTS IN TWO SEPERATE CARJACKING ATTEMPTS, ADDITIONALLY, IT WAS LATER CONFIRMED THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF COCAINE, MARIJUANA AND PCP.

① WHAT HAPPENED TO ME BY THE POLICE IS A CONCERN. YES, I WAS UNPREDICTABLE, BUT NOT PHYSICALLY IMPOSING. I WAS HANDCUFFED AND WEIGHED 160 POUNDS. MENDEZ OUTWEIGHTED ME BY 40 POUNDS. MENDEZ HAD WEIGHT ADVANTAGE AND SHOULD HAVE DROPPED THE FLASHLIGHT. BUT WHAT I DID PRIOR TO MY ARREST IS IRRELEVANT. NOTHING CAN BE WRITTEN OR SAID ABOUT WHAT I DID IS ANY REASON FOR A DEFENSE ON WHAT THE POLICE DID WRONG. ONCE I WAS HANDCUFFED, I WAS IN CUSTODY AND MENDEZ'S RESPONSIBILITY. MENDEZ DID NOT HAVE ME UNDER CONTROL. FOR WHAT I DID THAT NIGHT OF MAY 11<sup>TH</sup> 2005 FOR JUMPING IN FRONT OF A CAR, WHIPPING THE HOOD WITH A BELT, WALKING TOWARDS ANOTHER CAR AND RIDING A BIKE INTO A BAR, I'M BEING PUNISHED. BUT TO PUNISH ME BEFORE TRIAL OR CONVICTION IS A FEDERAL VIOLATION. POINT BLANK.

② FORTUNATELY, UPON INITIAL CONTACT, THE DEFENDANT WAS COOPERATIVE ENOUGH THAT HE ALLOWED CPL. MENDEZ TO HANDCUFF HIM. SHORTLY AFTER HOWEVER, THE DEFENDANT ATTEMPTED TO ESCAPE THE CONTROL OF CPL. MENDEZ WITH THE HANDCUFFS ON AND THIS IS WHEN THE PHYSICAL STRUGGLED ENSUED. CPL MENDEZ, IN AN ATTEMPT TO SUBDUE THE SUSPECT LOCKED HIS LEFT ARM UNDER THE SUBJECTS LEFT ARM IN AN ATTEMPT TO FORCE HIM TO THE GROUND. AT THIS TIME, DUE TO THE DEFENDANTS STRENGTH AND HIS DRUG INDUCED STATE, CPL MENDEZ WAS UNABLE TO TAKE PHYSICAL CONTROL OF HIM. IT WAS AT THIS TIME THAT THE DEFENDANT BEGAN TO MOVE CPL. MENDEZ AND HIMSELF TOWARD A BUSY ROADWAY. FEARING THAT THE DEFENDANT WOULD PLACE THEM BOTH IN A POSITION TO BE STRUCK BY A CAR, CPL. MENDEZ CAN BE HEARD FRANTICALLY SHOUTING FOR THE DEFENDANT TO STOP OR HE WOULD BE FORCED TO HIT HIM WITH THE FLASHLIGHT. CPL. MENDEZ SHOUTS A WARNING TWICE THEN STRIKES THE DEFENDANT IN THE HEAD. WHEN THE DEFENDANT STILL FAILS TO ADHERE TO COMMANDS, HE STRIKES



THE DEFENDANT A SECOND TIME. IT WAS AT THIS TIME HE WAS ABLE TO GAIN ENOUGH CONTROL OF THE DEFENDANT IN ORDER TO PLACE HIM OVER THE HOOD OF HIS POLICE CAR.

② MENDEZ WAS UNABLE TO TAKE PHYSICAL CONTROL OF ME BECAUSE SUPPOSEDLY HE HELD ONTO THE FLASHLIGHT. I AM HANDCUFFED WITH MY HANDS BEHIND MY BACK. I'M UPRIGHT ON JUST TWO FEET AND MENDEZ HAS TWO FEET AND TWO HANDS? COME ON, DROP THE FLASHLIGHT AND USE TWO HANDS, OR PEPPER SPRAY OR... THE LIST IS ENDLESS! CPL MENDEZ HIT ME TWO TIMES BACK TO BACK.

③ THIRD PARAGRAPH OF LT ROGER A WILLEY'S REPORT - MILLSBORO POLICE OFFICER PTLM LOWE WAS WRONG AND MALICIOUS. PTLM LOWE LIED ON HIS POLICE REPORT. PFC BUCHERT LIED ON HIS POLICE REPORT AND ALLOWED PTLM LOWE TO DO WHAT HE DID TO ME.

④ IN CONCLUSION, I BELIEVE CPL. MENDEZ WAS JUSTIFIED IN THE USE OF A FLASHLIGHT AS AN IMPACT WEAPON, SINCE IT WAS A WEAPON OF OPPORTUNITY, THE FLASHLIGHT WAS ALREADY IN HIS HAND AND CPL. MENDEZ FEARED HE WAS ABOUT TO BE DRAGGED INTO A BUSY ROADWAY BY A DEFENDANT WHO WAS UNDER THE INFLUENCE OF DRUGS AND DEMONSTRATED SUPERIOR STRENGTH. I DO FEEL HOWEVER THAT HE SHOULD HAVE CHOSEN THE NECK, COLLAR BONE OR SHOULDER AS AN INTENDED FIRST TARGET INSTEAD OF IMMEDIATELY STRIKING HIM IN THE HEAD. I ALSO FEEL THAT CPL MENDEZ MAY BENEFIT FROM SOME ADDITIONAL TRAINING IN PRESSURE POINT AND CONTROL TACTICS AS WELL AS WEAPONLESS DEFENSE.

⑤ CPL. MENDEZ WAS NOT JUSTIFIED WHEN HE HIT ME ON THE HEAD. SEEMS LIKE POLICIES, RULES AND REGULATIONS NEED TO BE BROUGHT TO MY ATTENTION AND SHOW ME HOW MUCH FORCE CAN BE APPLIED WHEN SOMEBODY IS HANDCUFFED. I'VE HAD LOCAL AUTHORITIES AND LAWYERS TELL ME THAT WHAT MENDEZ DID TO ME WAS WRONG AND ONCE HANDCUFFS ARE PUT ON SOMEBODY YOU ARE NOT TO HIT THEM ANY ANY KIND OF WAY. HOW MUCH STRENGTH CAN A PERSON HAVE THAT IS HANDCUFFED? I TOOK AN ASSAULT TO MY HEAD, ATTACKED WITH A TASER GUN, HIT IN THE BACK

OF THE NECK AND TASERED NUMEROUS TIMES AND ALSO COULD FIND A WAY OUT OF A RING OF POLICE TO TRY AND GET AWAY FROM MORE ASSAULT, THEN DOES ANYBODY BELIEVE I WOULD BLINDLY PUT MYSELF IN TRAFFIC? THE POLICE INVOLVED WERE WRONG AND MALICIOUS AND NOT PROFESSIONAL AND THE UNDERLINED TWO SENTENCES ON THE PREVIOUS PAGE IS THE MAIN ISSUE OF THE MENDEZ CASE, OR WAS IT PREMEDITATED, HIS INTENTIONS TO HIT ME WITH JUST THE FLASHLIGHT?

⑤ FIFTH PARAGRAPH OF LT. ROGER A. WILLEY'S REPORT - THIS PARAGRAPH SPEAKS FOR ITSELF.

DAVID S. YARNALL 548913



DATED - 12-29-06

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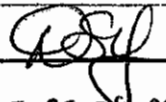
## CERTIFICATE OF SERVICE

I, DAVID SCOTT YARNALL, HEREBY CERTIFY THAT I HAVE  
SERVED A TRUE AND CORRECT COPY OF THE ATTACHED  
MOTION UPON THE FOLLOWING PARTY, ON THE 29 DAY  
OF DECEMBER, '06

MICHEAL TURMAN  
ATTORNEY GENERAL  
DEPT. OF JUSTICE  
102 WESTWATER ST  
DOVER DE 19904

BRUCE C. HERRON  
1500 SHALLCROSS AVE  
SUITE 1-A  
WILMINGTON DE 19806

DATE: 12/29/06

  
SIGNATURE OF MOVANT

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